

THE  
RIGHT

OF THE

GOVERNOR and COMPANY,

OF THE

COLONY OF

CONNECTICUT,

To Claim and Hold the LANDS

Within the Limits of their

CHARTER,

Lying West of the Province of *NEW-YORK*,

Stated and Considered:

In a LETTER to

*J. H.* ESQUIRE:

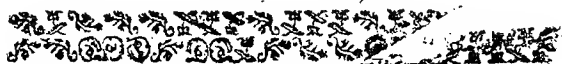
TO WHICH IS ADDED,

An ACCOUNT of the Purchase from the Indians,  
of Part of those Lands, by the Susquehanna  
and Delaware Companies, and their Proceedings  
thereon.

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HARTFORD:

Printed by EBEN. WATSON, near the Great  
Bridge, 1773.



## A LETTER, &c.

S I R,

\*\*\*\*\* WHEN I last saw you, the Claim of  
\*\*\*\*\* the Governor and Company of the  
\*\*\*\*\* W \*\*\*\*\* Colony of Connecticut to the Lands,  
\*\*\*\*\* within the Latitudes expressed in  
\*\*\*\*\* their former and renewed Charter,  
\*\*\*\*\* lying West of King CHARLES the  
Second's Patent to the Duke of York, now called  
the Province of New-York; was the Subject of  
our Conversation.—I then gave it as my Opinion,  
that their Title to those Lands, was good and va-  
lid; you differed from me, and requested of me  
the reasons on which I founded my Opinion; we  
were diverted from pursuing the Conversation on  
that Subject, at that Time;—I will now re-assume  
the Subject, and give you the Reasons of my Opi-  
nion, which are as follow, to wit.

THE first Patent granting any part of the Con-  
tinent of North-America, was that granted by  
Queen ELIZABETH, to Sir Walter Raleigh, dated  
25th March, 1584, of such Territories, as he  
should discover between 33° and 40° of North  
Latitude

the Equinoctial Line ; which Patent was from Walter's Attainders.

KING *James* the first's Patents, dated the 10th of April, 1606, divided Virginia into two Colonies ; the southern called the first Colony between  $34^{\circ}$  and  $41^{\circ}$  North Latitude from the Equinoctial Line, he granted to the London Company, so called : The Northern, called the second Colony, between  $38^{\circ}$  and  $45^{\circ}$  North Latitude, he granted to the Plymouth Company. This Patent for South Virginia, was vacated at the Desire of the Patentees—and King *James*, in May 1609, grants them a new Patent, bounded North to the  $40^{\circ}$  of North Latitude from the Equinoctial Line. The Patent for North Virginia, was not vacated so soon. In 1614, Capt. John Smith was in some Parts of North Virginia, and first gives it the Name of New-England.

KING *James*, by a new Patent, dated Nov. 3d, 1620, incorporated the Duke of Lenox, the Marquisses of Buckingham and Hamilton, the Earls of Arundel and Warwick, Sir Ferdinando Gorges and thirty four others, by the Name of The Great Council established at Plymouth, in the County of Devon, for the planting, ruling, ordering and governing of New-England, in America—and  
 “ Grants to them, and their Successors and Assigns, all that Part of America, lying and being  
 “ in Breadth from  $40^{\circ}$  of northerly Latitude from  
 “ the Equinoctial Line, to the  $48^{\circ}$  of the said  
 “ northerly Latitude, inclusively, and in Length  
 “ of and within, all the Breadth aforesaid, throughout the main Lands, from Sea to Sea ; together  
 “ also with all the firm Lands, Soil, Grounds, Havens, Ports, Rivers, Waters, Fishings, Mines  
 “ and

“ and Minerals, as well Royal Mines of Gold and  
 “ Silver, as other Mines and Minerals, precious  
 “ Stones, Quarries, and all and singular other  
 “ Commodities, Jurisdictions, Royalties, Privile-  
 “ ges, Franchises and Preheminences, both within  
 “ the said Tract of Land upon the Main, as also  
 “ within the Islands and Seas adjoining. Provided  
 “ always—That the said Islands, or any the Pre-  
 “ mises, by the said Letters Patent intended and  
 “ meant to be granted, be not actually possessed  
 “ or inhabited by any other Christian Prince or  
 “ State, nor be within the Bounds, Limits, or  
 “ Territories of that Southern Colony heretofore  
 “ by us granted to be planted by diverse of our  
 “ loving Subjects in the South Part.

“ And to the End that the said Territories may  
 “ forever hereafter be more particularly known  
 “ and distinguished, our Will and Pleasure is, that  
 “ the same shall from henceforth be nominated,  
 “ termed and called by the Name of New-Eng-  
 “ land, in America, and by that Name of New-  
 “ England, in America, the said Circuit, Precinct,  
 “ Limits, Continents, Islands and Places in Ame-  
 “ rica aforesaid—We do, do by these Presents,  
 “ for Us, our Heirs, Successors, name, call, erect,  
 “ found and establish, and by that Name to have  
 “ Continuance forever.

“ And further, our Will and Pleasure is, and  
 “ We do by these Presents, charge, command,  
 “ warrant and authorise the said Council, and their  
 “ Successors, or the major Part of them, which  
 “ shall be present and assembled for that Purpose,  
 “ shall, from Time to Time, under their common  
 “ Seal, distribute, convey, assign and set over such  
 “ particular Proportions of Lands, Tenements,  
 “ and Hereditaments, as are by these Presents for-  
 “ merly

merly granted ; unto each our loving Subjects,  
 naturally born, or Denizens, or others, as well  
 Adventurers as Planters, as by the said Com-  
 pany, upon a Commission of Survey and Distri-  
 bution executed and returned for that Purpose,  
 shall be named, appointed and allowed : where-  
 in our Will and Pleasure is, that Respect be had  
 as well to the Proportion of the Adventurers, as  
 to the special Hazard, Exploit or Merit of any  
 Person so to be recompenced, advanced or re-  
 warded."

This Charter or Patent to the Council established  
 at Plymouth, is the great civil Basis, on which all  
 the future Patents, dividing New-England, are  
 founded. The Council established at Plymouth,  
 after they had obtained the aforementioned Patent,  
 proceeded to divide out the Lands therein menti-  
 oned and described, and to grant and convey the  
 same, to different Persons and Companies, their  
 Associates and others—And by their Deed, inden-  
 tured, under their common Seal, bearing Date the  
 9th Day of March A.D. 1628—They "give, grant  
 and confirm to Sir Henry Roswell, &c. their Heirs,  
 and Assigns, and their Associates forever, all that Part  
 of New-England in America, which lies and extends  
 between a great River, there commonly called Mono-  
 mack, alias Merrimack, and a certain other River there  
 called Charles River, being in the Bottom of a  
 certain Bay, there commonly called Massachusetts, alias  
 Mattachusetts, alias Mossachusetts Bay, and also all  
 and singular those Lands and Hereditaments whatso-  
 ever, lying within the Space of three English Miles,  
 in the South Part of said Charles River, or of any  
 and every Part thereof ; and all and singular the  
 Lands and Hereditaments whatsoever, which lie and  
 are within the Space of three English Miles to the  
 Northward

Northward of the said River called Monemack, alias Merrimack, or to the Northward of any and every Part thereof; and all Lands and Hereditaments whatsoever, lying within the Limits aforesaid, North and South, in Latitude and in Breadth, and in Length and Longitude, of and within all the Breadth aforesaid, throughout the Main Lands there, from the Atlantic Sea and Ocean on the East Part, to the South Sea on the West Part, and all Lands and Grounds, &c. — And also all Islands lying in America aforesaid, in the said Seas, or either of them, on the western or eastern Coasts, &c."

KING Charles the first confirmed the foregoing Grant from the Council at Plymouth, to Sir Henry Roswell, &c. and Numbers of others, his Associates, by Letters patent, under the Great Seal of England, dated March 4th 1629, with the same Bounds and Limits, and with the following Proviso, viz. "Provided always, that if the said Lands, Islands, or any the Premises before mentioned, and by the Letters patent last mentioned, intended and meant to be granted, were at the Time of granting of the said former Letters Patent, dated the 3d of November, in the 18th Year of the Reign of his late Majesty, King James the first, actually possessed or inhabited by any other Christian Prince or State, or were within the Bounds or Territories of the said Southern Colony, then before granted by the said King to be planted by diverse of his loving Subjects in the South Part of America; that then the said Grant shall not extend to any such Parts or Parcels thereof, so formerly inhabited, or lying within the Bounds of the Southern Plantation aforesaid. But as to such Parts or Parcels so possessed or inhabited, by any such Christian Prince or State, or being within the Boundaries aforesaid, should be utterly void."

And afterwards, Robert Earl of Warwick, President of the said Council of Plymouth, by Deed, bearing

bearing Date the 10th Day of March, A.D. 1631, gives, grants and confirms unto the Right Hon. Viscount Say and Seal, Lord Brook, &c. to the Number of Eleven, their Heirs and Assigns, and their Associates forever—" *All that Part of New-England in America, which lies and extends itself from a River there called Narraganset River, the Space of Forty Leagues upon a strait Line near the Sea Shore, towards the South-west, West and by South, or West, as the Coast lyeth towards Virginia, accounting three English Miles to the League, and all and singular the Lands and Hereditaments whatsoever, lying and being within the Lands aforesaid, North and South in Latitude and Breadth, and in Length and Longitude, of and within all the Breadth aforesaid, throughout the main Lands there, from the western Ocean to the South Seas; and all Lands and Grounds, Soil, Wood and Woods, Grounds, Havens, Ports, Creeks and Rivers, Waters, Fishings and Hereditaments whatsoever, lying within the said Space, and every Part and Parcel thereof, and also all Islands lying in America aforesaid, in the said Seas, or either of them, on the Western or Eastern Coasts or Parts of the said Tracts of Land by the Presents to be given or granted.*"

The Council established at Plymouth proceeded in like Manner to grant and convey, divide and set out the Remainder of New-England; and in the Year 1635, having granted and conveyed said Lands, they resigned their said Charter into the Hands of the Crown; which appears a little strange when they really had nothing to resign; as they had actually before granted and conveyed away every thing they took by Virtue and Force of said Patent. —Lord Say and Seal, and Lord Brook, and five others, in July 1635, empower John Winthrop, jun. Esq; their Agent, in their Names, to take Possession

session of the Lands at the Mouth of Connecticut River; and soon after he arrived in New England, and built a Fort at the Mouth of said River, took Possession of the Lands in the Name and for the Use and Benefit of his Employers, and called the Place where he built his Fort Say-Brook, which Name it still retains. Soon after Mr. Hopkins, Hooker, Wyllys, and a Number of others, Associates and Assigns, under the Patent last mentioned, also took Possession of the Lands on Connecticut River, at Hartford, Windsor, Wethersfield, &c. and began Improvement and Cultivation there; entered Articles of Government, under which they lived and governed till the Restoration of King Charles the Second. In the Year 1637, Mr. Eaton and others, Associates and Assigns, under the same Patent, began a Settlement at New-Haven, and claim and extend their Settlement to Delaware Bay and River, built a trading House, purchased Lands of the Natives on both Sides of Delaware, and sent fifty Families to settle there.— They, as the People on Connecticut River had done, entered into a Compact for Government, under which they lived and governed till the Restoration of King Charles the Second, when they were united into one Colony, by that King's renewed Charter, made in April, 1662 : Before which Time they had purchased of, and conquered in just War from the Natives, the most or all of the Lands within their Patent, on the East Side of Hudson's River, and had purchased a large Tract on both Sides of Delaware River and Bay— and had also, before that Time, purchased of Lord Say and Seal, and Lord Brook, &c. the Lands which they had taken Possession of, for their own intended Use and Improvement, and which they

were willing to sell and dispose of, as they had by that Time laid aside all thoughts of removing themselves and Families into New-England, as they at first purposed and designed.

The Dutch and Swedes claimed to have possessed the Lands at New-York, Albany and the Jerseys, before the Grant and Patent, made Nov. 4th 1620, by King James, to the Council established at Plymouth in the County of Devon. September 19th 1650, Articles of Agreement were made and concluded at Hartford, on Connecticut River, between the Delegates of the Hon. Commissioners of the united Colonies, and the Delegates of Peter Stuyvesant, Esq; Governor General of the New-Netherlands. The Commissioners for New-Haven complained to said Delegates, among other Things, "*of several high and hostile Injuries which they and others of that Jurisdiction have received from and by Order of the aforesaid Mons. Kieft, in Delaware Bay and River, and in their Return thence, as by their former Propositions and Complaints may fully appear, and besides the English Rights, they claimed by Patent, presented and shewed several Purchases they have made on both sides the River and Bay of Delaware, of several large Tracts of Lands unto & somewhat above the Dutch House or Fort there, with the Consideration given to the said Sachems and their Companies for the same, acknowledged and cleared by the Hands of the Indians, whom they affirm were the true Proprietors, and testified by many Witnesses. They also affirmed, that according to the best of their Apprehension, they have sustained £ 1000 Damage there, partly by the Swedish Governor, but chiefly by Order of Mons. Keift, and therefore required due Satisfaction, and a peaceable Possession of the aforesaid Lands, to enjoy and improve according to their just Rights. The Dutch Governor,*

*by*

by Way of Answer, and insisted the Title and Right of Delaware, or the South River, as they call it, and to the Lands there as belonging to the High and Mighty States, and the West India Company, and professed he must protest against any other Claim, but is not provided to make any such Proof, as in such a Treaty might be expected, nor had he Commission to treat or conclude any Thing therein. — Upon Consideration whereof, We the said Arbitrators or Delegates, wanting sufficient Light to issue or determine any Thing in the Premises, are necessitated to leave both Parties in *Satu quo prius*, to plead and improve their just Interests at Delaware, for planting and trading, as they shall see Cause, only we desire that all Proceeding there, as in other Places, may be carried on in Love and Peace, till the Right may be further considered and justly issued either in Europe or here, by the two States of England and Holland.”

Concerning the Bounds and Limits for the Extension of the Dutch Claim Eastward, it was then agreed, “ That upon Long-Island, a Line run from the Westernmost Part of Oyster Bay, and so a straight and direct Line, to the Sea, shall be the Bounds betwixt the English and Dutch there, the easterly Part to belong to the English, and the westernmost Part to the Dutch. The Bounds upon the Main to begin at the West Side of Greenwich Bay, being about four Miles from Stanford, and so to return a Northerly Line twenty Miles up into the Country, and after as it shall be agreed by the two Governments of the Dutch and New-Haven, provided the said Line come not within Ten Miles of Hudson’s River; and it is agreed that the Dutch shall not at any Time hereafter build any House or Habitation, within six Miles of the said Line, the Inhabitants of Greenwich to remain (till further Consideration thereof be had) under the Government of  
the

*the Dutch. And it is agreed that the aforesaid Bounds and Limits, both on the Island and Main, shall be observed and kept inviolable, both by the English and the united Colonies, and all the Dutch Nation, without any Encroachment or Molestation, until a full and final Determination be agreed upon in Europe by mutual Consent of the two States of England and Holland."*

In this State the Affairs of the Colony of Connecticut remained, until the Restoration of King Charles the Second, when the Colony appointed their then Governor Winthrop, their Agent, to solicit a Confirmation of their Patent; and that Gentleman, under the Patronage of Lord Say and Seal, &c. whose Right the Colony had purchased of Col. Fenwick, their Agent, at what they call a great Price, for a poor People, petitioned King Charles accordingly; and on the 23d April, 1662, obtained what King Charles calls, the Renewed Patent or Charter to the Colony of Connecticut—wherein and whereby the said John Winthrop, John Mason, Samuel Wyllys, and sixteen others by Name, and all such others as then were, or thereafter should be admitted and made free of the Company and Society of the Colony of Connecticut, in America, are ordained, constituted and declared to be, and forever after to remain, one Body Corporate and Politic in Fact and Name, by the Name of Governor and Company of the English Colony of Connecticut, in New-England, in America, with certain Powers, Privileges and Authorities therein expressed—therein also granting to them and their Successors, " All that Part of  
 " our Dominions in New-England, in America,  
 " Bounden on the East by Narraganset River,  
 " commonly called Narraganset Bay, where the  
 " said

" said River falleth into the Sea ; and on the  
 " North by the Line of the Massachusetts Plan-  
 " tation ; and on the South by the Sea ; and in  
 " Longitude as the Line of the Massachusetts  
 " Colony, running from East to West, that is to  
 " say, from the said Narragansett Bay on the East,  
 " to the South Sea on the West, with the Islands  
 " thereunto joining, together with all firm Lands,  
 " &c. to have and to hold the same, unto the said  
 " Governor and Company, their Successors and  
 " Assigns forever, upon Trust, and for the Use  
 " and Benefit of, themselves and their Associates,  
 " Freemen of the said Colony, their Heirs and  
 " Assigns," in free and common Soccage, yield-  
 " ing in lieu of all Services, only the one Fifth of  
 " all Gold and Silver Ore—said Grant to be constru-  
 " ed, reputed and adjudged most favourably for said  
 " Governor and Company.

By this Charter the two Jurisdictions of Con-  
 necticut and New-Haven, were united, and all the  
 Lands aforesaid are granted to them, saving what  
 might be then actually possessed or inhabited by  
 any other christian Prince or State, &c. as is ex-  
 pressly excepted by the Proviso in the Patent from  
 King James the first aforementioned.

The Dutch and Swedes were at this Time, and  
 long before had been possessed of the Lands now  
 belonging to the Colonies of New-York and New-  
 Jersey, and had made considerable Plantations and  
 Improvements there.—

Whereupon they contended—That, one Hudson  
 was sent out by the Dutch East India Company, to  
 discover a North-West Passage to China, and that  
 having discovered Delaware Bay, he proceeded to  
 New-York, and penetrated up Hudson's River, as  
 far Northward as Lat. 43—That in 1614, the States

General

General granted a Patent to sundry Merchants for an exclusive Trade on that River—That the same Year they built a Fort on the West Side of the same, near Albany—That this Claim being prior to the Grant made by King James the First, to the Council at Plymouth, those Lands did not pass to the said Council, and consequently not to the Colony of Connecticut, by the former Patent, nor by King Charles the Second's renewed Charter aforementioned. In 1664. there being a War between the English and Dutch, King Charles the Second meditated sending a Force, to cause the Dutch to surrender the Lands by them possessed, on Hudson's river, as aforesaid, and on the 12th March, 1664, by his Letters patent, " Gave and granted unto his Royal Brother, James Duke of York, all that Part of the main Land in New-England, beginning at a certain Place called and known by the Name of St. Croix, next adjoining to New Scotland, in America, and from thence extending along the Sea Coast, unto a Place called Peronequic; or Penaquid, and so up the River thereof, to the furthest Head of the same, as it tendeth Northward, and extending from thence to the River Kenebequic, and upwards, by the shortest Course, to the River Canada Northward : And also all that Island or Islands commonly called by the several Name or Names of Mattawacks or Long-Island, situate, lying and being towards the West of Cape Cod, and the Narragansets, abutting up the main Land, between the two Rivers, there called and known by the Names of Connecticut and Hudson's River, together also with said River called Hudson's River, and all the Land from the West Side of Connecticut River, to the East Side of Delaware Bay, and also all those several Islands called

called or known by the Names of Martin's Vineyard and Nantucks, otherwise Nantucket, together with all the Lands, Soils, Islands, &c.— And all his Estate, Right, Title, Interest, Benefit, Advantage, Claim and Demand of, in or to the said Lands and Premises, or any Part or Parcels thereof." And on the 26th of April, 1664, he also gave a Commission to Col. Richard Nicolls, to dispossess the Dutch of the Territories by them claimed and called New Netherlands, and to take Possession of the same for the Duke of York, which Commission Col. Nicolls came from England upon, and executed in August, 1664; whereby it became necessary to settle the Extent of the Dutch Claim eastward, and thereby to ascertain the Bounds and Limits of his Royal Highness the Duke's Patent, and the Patent to the Colony of Connecticut: And thereupon Col. Nicolls, Sir Robert Carr, George Cartwright, and Samuel Maverick, by Virtue of his Majesty's Commission to them, bearing Date April 26, 1664, appointing them his Commissioners to visit the New-England Colonies, with full Power and Authority to hear, and receive, and examine, and determine all Complaints, and Appeals, and proceed in all Things for providing for, and settling the Peace of said Country. On the 30th of November, 1664, at New-York, undertook to settle the Bounds and Limits of his Royal Highness the Duke's Patent, and the Patent to Connecticut, and made their Decree thereon, in the Words following, viz. " We  
 " have heard the Differences about the Bounds of  
 " the Patents granted to his Royal Highness the  
 " Duke of York, and his Majesty's Colony of  
 " Connecticut. And having deliberately considered all the Reasons alledged by Mr Allyn,  
 " sen.

“ sen. Mr. Gold, Mr. Richards, and Capt Win-  
 “ throp, appointed by the General Assembly held  
 “ at Hartford, the 13th of October, 1664, to ac-  
 “ company John Winthrop, Esq; the Governor  
 “ of his Majesty’s Colony of Connecticut, to New-  
 “ York, and by Mr. Howel and Capt. Young of  
 “ Long-Island, why the said Long-Island should  
 “ be under the Government of Connecticut,  
 “ which are too long here to be recited——  
 “ We do Declare and Order, the southern Bounds  
 “ of his Majesty’s Colony of Connecticut is the Sea,  
 “ and that Long-Island is to be under the Go-  
 “ vernment of his Royal Highness the Duke of  
 “ York, as is expressed by plain Words in said  
 “ Patents respectively. And also, by Virtue of  
 “ His Majesty’s Commission, and by the Consent  
 “ of both the Governors and the Gentlemen a-  
 “ bove-named. We do also Order and Declare,  
 “ That the Creek or River, called Mame-  
 “ nock, which is reputed to be about twelve  
 “ Miles to the East of West-Chester, and a Line  
 “ drawn from the East Point or Side, where the  
 “ fresh Water falls into the salt, at High Water  
 “ Mark, North North West, to the Line of the Mas-  
 “ sachusetts be the Western Bounds of the said Co-  
 “ lony of Connecticut. And all Plantations lying  
 “ Westward of that Creek and Line so drawn, shall  
 “ be under His Royal Highness’ Government, and  
 “ all the Plantations lying Eastward of that Creek  
 “ and Line, to be under the Government of Con-  
 “ necticut.”—To which the Commissioners there-  
 in mentioned, from Connecticut, subscribed in the  
 Words following, to wit.

“ We underwritten, on Behalf of the Colony  
 “ of Connecticut, have assented unto the Deter-  
 “ mination of his Majesty’s Commissioners, in Re-  
 “ lation

lation to the Bounds and Limits of his Royal Highness the Duke's Patent, and the Patent of Connecticut."

Col. Nicolls remained in the Administration of the Duke's Government three Years, which was chiefly taken up in examining and settling the ancient Dutch Grants. On the 30th June, 1673, New-York and it's Territories, was recovered by the Dutch, and their Government was again revived and continued till 1674; on a Treaty of Peace signed at Westminster in February, the English Government was restored; and on the 29th of June, 1674, his Royal Highness the Duke of York obtained from the King a new Patent of the same Lands and Territories, in the same Words with his former, before recited, differing only in the Date.

"At a Council held at Fort James, in New-York, the 23d November, A. D. 1683, certain Articles were concluded upon between Col. Thomas Dungan, then Governor of that Province, on one Side, and Robert Treat, Esq; Governor of the Colony of Connecticut, Maj. Nathan Gold, Capt. John Allyn, Secretary, and Mr. William Pitkin, in Commission with him from Connecticut, on the other Side—Wherein it is agreed, that the Bounds, Meers, and Dividend between His Royal Highness' Territories, or Province in America, & the Colony of Connecticut forever hereafter, shall begin at a certain Brook or River, called Byram Brook or River, which is between the Towns of Rye and Greenwich, at a Point called Lion's Point, the Eastern Point of Byram River, from thence to go as the River runs, to the Place where the common Road or Wading Place over the River, is, and from thence to go North North West into the Country, so far as will be eight English Miles from the aforesaid Lion's Point: And that a Line of twelve

C

Miles

Miles being measured from said Lion's Point, according to the Line or general Course of the Sound Eastward, where said twelve Mile Line endeth, another Line shall be run from the Sound eight Miles into the Country, North North West; and also that a fourth Line be run, that is to say, from the Northmost End of the Eight Mile Line, being the third Line mentioned, which fourth Line, with the first mentioned Line, shall be the Bounds where they shall fall to run: And then, from the Eastward End of the fourth mentioned Line, a parallel Line to Hudson's River, in every Place twenty Miles Distance therefrom, shall be the Bounds there, between the said Territories, or Province of New York, and the said Colony of Connecticut, so far as Connecticut Colony doth extend Northward, that is to the South Line of the Massachusetts Colony—only it is provided, that in Case the Line from Byram Brock's Mouth, North North West, eight Miles, and the Line that is to run twelve Miles, to the End of the third forementioned Line of Eight Miles, do diminish or take away Land within twenty Miles of Hudson's River, that then so much as is in Land diminished of twenty Miles from Hudson's River thereby, shall be added out of Connecticut Bounds unto the Line aforementioned, parallel to Hudson's River, and twenty Miles distant from it, the Addition to be made the whole Length of the said parallel Line, and in such Breadth as shall make up Quantity for Quantity what shall be diminished as aforesaid—Surveyors to be appointed from each Government to run the beforementioned Lines and Bounds, between his Royal Highness's Government of New York and the Colony of Connecticut, to meet at the Town of Stamford, on the first Wednesday of October next.—And if it please the King's Majesty, and his Royal Highness, to accept and confirm these Articles, they shall be good to all

*all Intents forever, between his Royal Highness, his Heirs and Assigns, and the Corporation of Connecticut, and their Successors."*

An actual Survey of the Lands and Places mentioned in the foregoing Agreement, was made, and reported by the Surveyors and Commissioners appointed by each Party for that Purpose, October 10th, 1684—Nothing further was done thereon, until an *ex parte*, Application from New-York, 28th March, 1700.—At a Court at Kensington, King William in Council—Upon occasion, of Differences and Disputes between said Province and Colony, relating to the Right of Government over the Towns of Bedford and Rye lying on their Borders, and determining that Difference, and preventing all future Disputes about the division Line and Boundaries between said Province and Colony—His Majesty was pleased to declare His Royal Approbation and Confirmation of the said Agreement and Survey—Whereof the respective Governments of New-York and Connecticut, the Towns of Rye and Bedford, and all Persons whom it might Concern, were to take due Notice and conform themselves thereunto—since which the Proviso in said Agreement hath been considered by said Province and Colony, and an allowance made to New-York, by Connecticut, and a streight Line settled and agreed upon between them, as a divisional Line, to which both said Province and Colony now conform themselves accordingly.

The Honorable the Lords of Trade and Plantations, not long before the 15th July 1680, sent a Number of Queries to the Governor and Company of the Colony of Connecticut among which the 10th Query is—"What are the Boundaries, Longitude,

“ gitude, Latitude and Contents of Land within  
 “ your Government ? &c.”—To which Query  
 the Governor and Company on the 15th July 1680  
 make Answer—“ Our Boundaries are expressed  
 “ in our Charter.” The same Query has been  
 frequently made since that Time, and always an-  
 swered as above, except in one or two Instances.

On the 28th February 1681, King Charles the  
 Second by His Letters Patent, gave and granted  
 unto “ Sir William Penn his Heirs and Assigns—  
 “ All that Tract or Parcel of Land in America,  
 “ with all the Islands therein contained, as the  
 “ same is bounded, on the East of Delaware River,  
 “ from twelve Miles Northward of Newcastle  
 “ Town, unto the three and fortieth Degree of  
 “ Northern Latitude, if the said River doth ex-  
 “ tend so far Northwards, then by said River so  
 “ far as it doth extend, and from the Head of said  
 “ River the Eastern Bounds are to be determined  
 “ by a Meridian Line to be drawn from the Head  
 “ of the said River, unto the said three and forti-  
 “ eth Degree.” The said Lands to extend West-  
 “ wards five Degrees in Longitude to be comput-  
 “ ed from the said Eastern Bounds—And the  
 “ said Lands to be bounded on the North by the  
 “ beginning of the three and fortieth degree of  
 “ Northern Latitude—And on the South by a  
 “ Circle drawn at twelve Miles distance from  
 “ Newcastle, Northwards and Westwards unto the  
 “ beginning of the fortieth Degree of Northern  
 “ Latitude, and then by a strait Line Westward  
 “ to the Limits of Longitude above mentioned.  
 “ To Have, Hold, possess and enjoy unto the said  
 “ William Penn, his Heirs and Assigns, &c.”

The Northern Part of the Bounds and Limits  
 of the fore recited Grant to Sir William Penn,  
 laps

laps on, or spreads over some Part of the Western Lands before granted and repeatedly confirmed to the Governor and Company of the English Colony of Connecticut.

I have now recited the most material Grants and Transactions, on which the Merits of the present Cause depend—Some others possibly I shall have occasion to Recite, in the Course of the Remarks, I shall now make on the extent Construction and legal Operation of those before recited.—The Subjects of the King of England, under his Countenance and with his Permission, having discovered, and in behalf of the King their Master, entered upon, and taken Possession of, that Part of the Continent of America, lying between the  $34^{\circ}$  and  $48^{\circ}$  Degrees of Northern Latitude—King James the First divided the same into two Colonies, called the Southern or Virginia<sup>2</sup>—and the Northern or New-England; the latter he granted to the Council established at Plymouth, who were incorporated and known by the Name of the Council of New-England, established at Plymouth; the Bounds, Limits and Extent of New-England, appear in the Grant before recited. The Council established at Plymouth, on the 19th Day of March, 1631, under their Seal, and Hand of the Earl of Warwick, then President of that Council, granted to Lord Say and Seal, Lord Brook, &c. their Heirs, Assigns and Associates forever, all that Tract of Land, bounded and described in the Grant before recited: I shall here consider the Extent and Operation of these two Grants, especially that from the Earl of Warwick to Lord Say and Seal, &c. for it must be presumed that the Grant from King James, to the Plymouth Council, was understood to include what was granted by the Earl of Warwick.

wick, who is not to be supposed to have extended his Grant out of, or beyond the Limits of the Grant to that Council or Company. As to the Extent of the Earl of Warwick's Grant to Lord Say and Seal, &c. it may be observed, that the eastern and western Bounds are so explicitly pointed out as to be too clear and plain to admit of any Doubt or Dispute. But as the Breadth, or Extent of the Grant North and South, or Northward from the Sea Coast, is not so explicitly and clearly pointed out, that is to be collected from the Words in the Grant, and a fair Construction of the Intent of the Deed. By the Grant, the several Rivers within the Limits aforesaid, by whatever Name or Names they are called and known, are granted, and as the Rivers are granted, it may justly be concluded, and fully implied, that the Lands upon and between those Rivers were included and intended to be within the Grant. Indeed, the Rivers seem to be granted as Appurtenances to the Lands: And although the Grant of an Appurtenance doth not include the Premises to which it appertains, yet it may evidence the Intention of the Grant, with Respect to the Premises intended to be granted; and to suppose that by the Grant of those Rivers, was intended no more than the Mouths and Outlets of them into the Sea, allowing no Breadth of Land, or Length of Rivers back into the Country; or to suppose the Rivers in their Length, to be granted, and that the Lands on and between them were not intended to be granted, would be manifestly absurd, and destructive of the Grant itself, which the Law, by reasonable Construction, delights to support. *Ut Res magis valeat quam pereat.* And therefore, as it is manifest the Grant, according to a just Construction

struction of it, includes a Breadth as well as Length, and by the Words *in Breadth and Latitude*, some Breadth is intended, the Grant may justly be understood to extend in Breadth and Latitude, from the Sea, or the southerly Part, to the northern Extension of those Rivers; unless by some other Boundaries it shall be limited to a narrowed Breadth, which happened to be the Case, by the prior Grant to the Virginia Company on the South, and the prior Grant to the Massachusetts Colony, on the North.

That this Construction is agreeable to the Intention of the Grant in Question; further appears, by the Bounds in the Charter to the Colony of Connecticut, dated 13th of April, 1662; which Bounds the Colony North on the south Line of the Massachusetts; which shews how the Grant from the Earl of Warwick was understood in that Day. This Grant therefore, being limited on the easterly Narraganset Bay or River; on the North by the south Line of the Massachusetts, which extended across the Continent, and on the southerly Side, by the Sea Coast, as far as forty Leagues from Narraganset River, and being to continue that Breadth throughout the main Lands—The just Construction appears to be, That the same Breadth which the Grant contained at the End of forty Leagues, it is to hold the same Breadth through its whole Extent, to the South Seas.—As to the Operation of these Grants, it may be said, That as the King, by the Discovery of this Part of the Continent of America, and an actual Entry on Part thereof, made by his Subjects, claiming the whole Country for their Sovereign, became vested with a Right and Title to such Parts as were found to be *Vacuum Domicilium*, or uninhabited,

uninhabited, both in Fee and Dominion; and of such Parts of the newly discovered Country, as were found inhabited or possessed by the native Claimers and Proprietors; the King became vested with a Right of Purchase preferable to any other Prince or State, or what is called A Right of Preemption: So that by King James's Grant to the Council of New-England established at Plymouth; that Company became vested with the same Right both of Fee and Right of Preemption in and unto all the Lands, Soils, &c. within the limits of their Grant—subject to the Proviso therein, as before recited—from whence it follows that their Grants, vested their respective Grantees, with the same Right of Property and Preemption, which before was in the King—or that those Grantees respectively were vested with all that the Crown had before the Grant, or could convey thereby. On the ground of the Proviso in said Grant, and the Claim of the Dutch to have been possessed of the Lands on Hudson's River, &c. the afore recited Agreement, with the Dutch in 1650, was made; and on that Claim and the after Conquest of the Dutch, the Grant afore recited was made by King Charles to the Duke of York, which afterwards made it necessary to ascertain the Bounds and Limits of the Patent to His Royal Highness the Duke, and the Patent to the Governor and Company of the Colony of Connecticut.

Under the Grant to Lord Say and Seal, &c. the inhabitants with the Limits thereof, proceeded to Purchase of the Natives, Settle, and Cultivate their Lands, and extend their Plantations and Improvements as before recited; till the Year 1662, when they made Application to King Charles the Second, who on the 23d of April 1662, was graciously

ously pleased to grant to them the Charter under which the Colony now, and ever since have governed, ordered and transacted their Affairs— wherein and whereby, they are created and made a Body Corporate and Politic in Fact and Name, by the Name of Governor and Company of the English Colony of Connecticut, in New-England; in America, with ample Privileges and Powers of Legislation and Government, on the Terms, Considerations and Motives expressed in the Preamble to said Charter: The People of this Colony being thus Incorporated and made capable in Law to Have, Take, Possess and Purchase Lands, Rights, Privileges, &c. and to grant, demise, alien and dispose of the same, and being vested with Authority and Power to order and manage the Affairs and Business of the Colony. The King in the latter Part of the Charter, renewed and confirmed the Grant to the said Governor and Company, of their Lands aforesaid, in and by the Words herein before recited. Upon the Extent and Operation of the Charter of King Charles the Second, to the Governor and Company of the Colony of Connecticut, it may be observed, That there appears to be such an Agreement in the Description or Limits bounding the Lands granted therein, with those describing the Lands intended to be conveyed by the Council of Plymouth, to Lord Say and Seal, &c. that it can't be doubted that the same Lands in Situation and Extent, were really intended to be granted in and by each of those respective Grants. Thence it follows, that where it happens that any Expressions found in one of those Grants, are attended with any Uncertainty; or there happens to be any Omission in describing any particular Parts, the same may

be properly explained or supplied, by a more explicit Description of such Parts in the other Grants. Such a Method of considering Grants of Lands or Countries, made in those early Days, must be a most reasonable, just and equitable Manner of judging : For as in that Day no municipal Laws of the Country had been established for regulating Grants and Conveyances, the Laws of natural Equity must be allowed to govern in those Cases. If therefore the Intention and Understanding of Grantors and Grantees, may fairly be collected from their particular Deeds, or from the Connection they have with each other, a Construction may be made agreeable to the Minds of both Giver and Receiver, which constitutes the Essence of a Grant and also shews the Meaning of it. Thus in the present Case, the Charter confirms and illustrates the Construction given of the Grant from the Council of Plymouth with Respect to the north Extention of that Grant.

The Charter, it is plain, is predicated on a prior Purchase made by the Colony, and sets forth, that the People claimed under some Grantor or Grantors, which doubtless refers to the Purchase from, and their Claim under, the Plymouth Company :— Therefore, as the Charter bounds North on the Massachusetts, so it evidences the Grant from the Council of Plymouth was then understood to extend so far North ; forasmuch as the Purchase is supposed to be as extensive as the Grant in the Charter. And on the other Hand, that Purchase describes the south Line of the Grant, more particularly than the Charter, to wit, Forty Leagues on the Sea Coasts, from Narraganset River, and then to continue that Breadth to the South Seas, so it explains and illustrates the Intention of the  
 Charter

Charter with Regard to the southern Limits of the Grant. It is altogether improbable, that either the People of Connecticut intended to ask, or that the King intended to grant, beyond the Bounds and Limits of the Purchase referred to : And it is also to be presumed, the Parties intended to request, and that the King intended to grant, as extensive as the Limits of their Purchase and Claim were. With Regard to the Intention and Operation of the Charter, it appears, that manifest Distinction is made and kept up, between the Grant of Power, Authority, Jurisdiction and Government, and the Grant of the Soil and the Property in the Lands. Jurisdiction and Property are not only kept distinct, and given and granted by distinct Parts, and different Expressions in the Charter, but they are in their Natures wholly different, and by no means imply or include each other, although the Powers of Government, and Right of Soil may be granted in one and the same Letters Patent ; yet it must be done by two distinct Grants in the same Instrument, inasmuch as the Grant of One, doth not imply the Grant of the Other. The Jurisdiction, or Power of Government may belong to One, and the Right of Soil within that Jurisdiction, may belong to the Others ; and this is more generally the Case. In the Consideration therefore, of the future Transactions relative to the Settlement of the Limits between the Duke of York's Patent, and the Patent to the Governor & Company of the Colony of Connecticut, it will be proper, carefully to observe whether the same respects & affects Jurisdiction, or Property, or includes both of them ; — That the discovery of a new Country, by the Subjects of a Prince, vests him as King, with that  
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Right in Law, which accrues by such discovery ; it is also equally so, with respect to what Right is gained by actual entry upon such new Discoveries ; and if the Country so discovered and entered upon, be uninhabited, the King becomes vested with the Fee and Property, as well as with the Dominion over the same, and the Subjects in order to hold the same ; are to hold it of the King as Lord Paramount of the Fee. But if the new discovered Country be inhabited, the King in that Case becomes vested only, with a Right of Preemption, to the inhabited Part. To say the Native Inhabitants, though Barbarians, have no Right or Property in Lands more than the wild Beasts of the Wilderness, either because they are Heathens, or because they do not improve Lands, by Culture, Pasturage, &c. as most civilized Nations do, is to deny them the essential Rights of Men ; as neither Property or Dominion, are founded in Grace—The Earth is given by him who made it, to the Children of Men, without limitation to good or bad.—But such a Right of Preemption is acquired by discovery, and entry as aforesaid, and according to the Law of Nature and Nations, it excludes the Claims or Pretences of all foreign Princes.—That not only the Rights which the King hath in Fee and Dominion, but also the Rights of Preemption are grantable and assignable to his Subjects ; those Purchases that are made in Consequence of such Right of Preemption, are for the Benefit of the Subject, and generally made by them—it necessarily follows—The King may Grant to his Subjects the Privilege of making those Purchases—This Matter or Point is verified by the general Practice of all the American Colonies, who have claimed the Privilege of Purchasing from the Natives all the

the unpurchased Lands within the Limits of their Grants from the King respectively. It is further to be observed, That those Persons who discover a Country or Purchase any Part of it, are intitled in Equity prior to any other Subjects to have and receive a Grant and Confirmation from the King, and that when they or their Assigns obtain such Grant and Confirmation, they become vested in Law as well as Equity, with a Title under him.— And therefore, when the King by the Royal Charter to the Governor and Company of the Colony of Connecticut, granted and confirmed to them all the Lands, Soils, Grounds, Havens, &c. he not only granted them the Property of these Lands, which were uninhabited, and those which the Grantees had settled upon, and which they had before purchased of the Native Claimers, but also a Right of Preemption to those Parts which were inhabited by the Natives, and had not then been purchased of them ;—all that the King could Grant, was in that Case granted, and passed to the Grantees :—as when a Grant is made of the whole, when the Grantor is not seized of the whole, but only of a Part, or of a certain Proportion of the Right, all that which the Grantor hath in the Premises, passes by his Grant—consequently the Governor and Company aforesaid, were vested with that Right of Preemption which the King before his Grant thereof was vested with, and they appear to have been vested with that Royalty and Privilege of Purchase, which is mentioned and intended in and by the Charter aforesaid, throughout the whole Limits and Extent thereof. That the Right of Preemption which the said Governor and Company were intitled to was not only irrevocable by the Grantor, but also exclusive of all other of the  
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King's Subjects. It is a Maxim in Law, that the King cannot resume his own Grant, without the Consent of the Grantee ; and as he cannot resume his Grant, so neither can he resume any Part of it. And as he cannot resume, so neither can he grant a Licence or Privilege to any other Subject or Subjects, to purchase those Lands of which he has before granted the Right of Preemption ; as that would be resuming his Grant, or an Attempt to that Purpose ; or rather, it may be supposed a Nullity and Void in Law. If any Subject therefore, other than he to whom the King has fully granted the Right and Preemption, shall presume to purchase the native Right to Lands of which the Right of Purchase is before granted to the Other, that Subject attempts implicitly to hold under a foreign Lord, in Opposition to the Right of his own Sovereign, and consequently, by such Action, virtually renounces his Allegiance. In that Case, he can have no Grant or Licence from the King, because the Right is not in the King to grant ; and what ever Colour or Pretence such a Subject may imagine, yet he can have no Right in Law or Equity, to encroach upon and act in Opposition to the prior Right of the Other, legally obtained and held of the King.

From the foregoing Observations, it appears, that the Governor and Company of the Colony of Connecticut, were, by their Charter, vested with the Powers of Government, and confirmed in the Right of Soil, and Right of Preemption, to all the Lands within the Limits of their Grant ; and therefore it follows, that all the Right or Title which even the King, or any Colony, Company, or other Subject hath or can from that Time have to the Lands, or Right to purchase Lands of the Natives,

Natives, within the Limits or Bounds of the Grant in said Charter, must be derived from and under the same, save only the Lands actually possessed by the Dutch, which are saved by the Proviso in the Grant from the King ; and that all Claims within those Limits in Opposition to the Right under the Charter, are and must be deemed illegal and ineffectual, whether such Claims are made, on the one Part or the other of said Grant—unless the same have been by subsequent Transactions either given up resigned, released or limited, which I conceive has never been done.

However, as great Pretences have been and are made of claiming the Fee of those Lands which have fallen within the Jurisdiction of New-York, and the Jurisdiction and Fee of the Lands West of that Province, within the Limits of the Charter to the Governor and Company of the Colony of Connecticut, in Consequence of the subsequent Transactions, respecting the Settlement of the Limits between the Patent to the Duke of York, and the Patent to the Governor and Company of the Colony of Connecticut ; it will be necessary to take Notice of those several Transactions, and make some Observations upon them.

About two Years after the Date of the Connecticut Charter, to wit, on the 12th of March 1664, King Charles the Second, by Letters Patent of that Date, granted to his Royal Brother James Duke of York, certain Lands in America, described as in the Grant herein before recited—and by the same Letters Patent the King granted to the Duke, the Jurisdiction and Powers of Government over the Lands contained in his Grant.

With Regard to the Patent it may be observed, That so far as the Grant to the Duke of York lapped

ped on, or interfered with the Grant to Connecticut it could take no effect, as the Lands or Property of them was not in the King, but in the Governor and Company of the Colony of Connecticut, when the Duke's Grant was made. And although Bounds were given to the Duke's Grant which interfered with the Bounds given in the Connecticut Grant, yet in Construction of Law, the Duke's Grant must be considered, as only extending to the Bounds of Connecticut Grant, and bounding by it.—That all the Duke could in Law or Equity Claim, by Force of his Grants, that relates to the present Case, was the Lands that the Dutch claimed to have been possessed of on and near Hudson's River, within the Limits of the Connecticut Grant, before the Grant made by King James, to the Council established at Plymouth, and which was saved and excepted out of that Grant, and that was all he became vested with a title to, by the surrendery of the Dutch, and as their Surrender, extended no farther than their Possessions, it included no Part of Connecticut Lands, and so the Duke's Possession could extend no further than to the Connecticut Grant.—The Dutch being conquered and having on the 27th of August 1664, surrendered all the Lands they had been possessed of within the Limits of the Grant to the Colony of Connecticut, on and near Hudson's River contained in the Proviso aforementioned, and the Duke of York thereby becoming vested therewith, it became necessary that the Bounds and Limits of the Dutch Possessions so far as they respected the Connecticut Grant, should be settled and ascertained—and thereupon, and on that Ground only I conceive, Col. Nichols, &c. His Majesty's Commissioners afore-named, took up

up the Matter, and on the 30th of Nov. 1664, declared and determined thereon in Manner as before recited, and the Governor and Commissioners for Connecticut assented thereto as aforesaid.

By those Proceedings and Determinations, it appears that the Lines of Jurisdiction and Government, so far as they respected the Bounds and Limits of the Dukes Patent, and the Patent to Connecticut, only were fixed and limited. If it be considered that the Words made Use of in the Declaration respect Jurisdiction only, viz. " All Plantations lying Westward of that Creek and Line, to be under the Duke's Government, and all Plantations lying Eastward of that Creek and Line, to be under the Government of Connecticut." Nothing concerning the Soil and Property in Lands is so much as mentioned; and therefore, although the Duke's Jurisdiction was by that Determination, extended farther Eastward than the Dutch Claims, it might be consistent with the property's remaining where or in those in whom it was before vested.—As to have the Government over the Plantations or Towns; and to have or own the Property of the Lands in them, are distinct Ideas. And as Government is only in this Case mentioned, it is plain things of Government only affected or intended to be fixed. That those Commissioners neither had or could have by their Commission, authority to determine or affix Lines, Extents, or Rights of Property.—It has been before observed the King cannot resume his own Grant; and as that appears not to be in the Power of the King, so neither is it agreeable to the Constitution for the King in a summary Man-

ner to appoint Commissioners to determine the Property of his Subjects; therefore the King did not think proper to empower, or even to attempt empowering them for that Purpose. It would have been even more dishonorable to the Crown to have commissioned the Duke's Governor for such a Purpose, than an indifferent Person, and as he is the Principal in that Commission, it is to be presumed in Honour to the King, that there was no Intention to authorise the Commissioners to fix or determine the Right of Soil. Consequently if the Commissioners had intended to include and limit Property with Jurisdiction, they would have exceeded their Commission, and their Doings so far must have been Void.—Perhaps it will be objected—That the King's Commissioners, and the Governor and Commissioners of Connecticut, understood, that Determination respected and limited Property and Jurisdiction, and that the Lands Westward of that Creek and Line should belong to and be the Property of the Duke, as well as, that the Plantations thereon should be under his Government—and that, with that understanding, the Governor and Commissioners from Connecticut consented thereto—and that when the Grantee consents, the King may re-assume or limit his Grant, &c.—as no injury can be done to the willing Mind.—To which I Answer—That although it be true they signified their Consent to what was done, or said to be ordered and declared; yet they consented to nothing more than what is fairly comprehended and included in the Determination, and as there are no Words used therein which include the Right of Soil, so that Consent cannot be understood to be a Consent to give up

or limit the Property in Lands—and although it be allowed, the meaning and intention of the Parties to an Instrument, so far as they appear by the Writing itself, ought to take Place, if consistent with Law—yet any suppos'd intention or understanding which doth not appear by the Writing they have executed, can be of no avail in Law or Equity; and as no such understanding doth appear from the Face of the Determination, nothing can be argued therefrom stronger than what a meer extraneous imagination will support.—The Words used import no such understanding or sense, unless it be supposed, that in those times it was the general Sense and Opinion, that Property and Jurisdiction were inseperable, and that the Parties concerned understood the Matter in that Light—But this was not the Opinion of that Day, the respective Patents shew the contrary—and if it should even be allowed that some Men, were of that Opinion, and that the Commissioners were of that Number, that would not alter the Case, it would be very absurd to plead a vulgar Error, as that must be, in support of a Construction against Law. Further, it no way follows, the event or effect would be according to their Opinion, as a Mistake in their Judgment, about the future Construction of their Writings no ways alters the Case; but a Judgment is to be made according to what appears from the Words they thought proper to express their meaning by; these are the proper Evidences of what they did and what they intended.

What the understanding of this Matter has since been, and how it has been considered will appear from the subsequent Transactions between the two Governments of New-York and Connecticut.

ment. From those Transactions as before recited it appears that nineteen Years after the Agreement in 1664, and after the Dutch had re-taken and re-surrendered their Possessions—A new Agreement was come into between the two Governments of New-York and Connecticut in 1683, which Agreement was made, by Reason of its being insisted on the Part of the Duke of York, that there had been an Error in the Agreement of 1664—and the Colony of Connecticut though they were sensible of no Error, yet consented thereto, that they might Please, and be on good Terms with the Duke of York, then too powerful an Adversary, for an infant Colony to contend with, as he was then Prime Minister and Heir Apparent to the Crown. Considering him therefore, in such an exalted Station and Power, as well as the arbitrary Principles of the Man, and the then Times, tho't it more expedient to be complaisant Supplicants, than to appear as resolute Disputants in support of their Rights. They accordingly instructed their Commissioners to prevail with Governor Dungan to take up with as little of their Government as might be, and back their Reasons with intreaties; and if they did give up the Jurisdiction, as far as Governor Dungan demanded, to wit, to twenty Miles East of Hudson's River, yet that they should save the Fee and Property of the Lands—upon those considerations the Agreement of 1683, was made and come into, on the Part of the Colony of Connecticut. Here it may be observed, that an Agreement come into by one Party, under such Circumstances, ought to be constructed as much in Favour of that Party as may be, if not considered as Void as to him; however,

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the Agreement being come into as aforesaid, the Condition annexed thereto, to wit, " if the King " and his Royal Highness should be pleased to " accept and ratify it, then it should be good, &c." implies as strong as if it had been expressed, that if the King and the Duke were not pleased to accept and ratify it, then it should not be good, but Void, and such acceptance never was or has been had or made—had it been ratified as was expected, it would have settled all Dispute between the two Governments, and fully answered the design of Connecticut in coming into it, on their Part—But as it never was done, Connecticut, on the Demise of the King and the Duke's being King without any acceptance or ratification, well knowing after those Events, the Condition aforesaid not only would not but could not be performed, it could not take Effect, they as they justly might, claimed and exerted their Jurisdiction as before, and continued the same, until the Year 1700, when New-York made an *ex parte* Application to the King, for an interposition of the Royal Authority, by a ratification of that Agreement and Survey, and thereupon King William in Council, made a Determination thereon, as before recited.

Here it may be observed on the last mentioned Agreement, and on the Confirmation thereof, That the said Agreement relates expressly, only to the Bounds, Meers and Dividend, between the Duke's Patent and the Patent to Connecticut—and that, as the occasion of that Confirmation, was the Difference and Dispute about the Right of Government over the Towns of Rye and Bedford, so the manifest Intention of the Determination appears to be for terminating the Difference, and preventing

preventing future Disputes about the Line of Government, and as that Confirmation referred to, and was predicated upon them and nothing else, it could extend no farther than to what respected Jurisdiction and Government, and which only seems to be in Dispute—But if it should even be supposed, the intention of the King was that his Approbation and Confirmation should extend to, and respect Property as well as Right of Government, it could not operate to such Purpose; the Right of Soil was wholly passed from the King before, and was either in Connecticut or had reverted to the Crown by the Accession of the Duke of York. If therefore the Property was in Connecticut, the King could not by that Act of a supposed Confirmation, re-vest the King with it; and if it was in the King already, that Act must be fruitless and vain, as it could operate to no Purpose in Law, relating to the Right of Soil, or Property in the Lands; the Confirmation therefore could respect nothing but Right of Government, whether the Agreement was more or less extensive or not. The Royal Pleasure signified as aforesaid, could by no Rules of Law, operate as a Confirmation of the Agreement and Survey to which it refers in any proper Sense of a Confirmation in Law—It is evident the Conditions in the Agreement for Reasons already offered, respected the King's Majesty and the Duke of York's acceptance and ratification, that Government then being a proprietary Government, but after it came to be a kingly Government, the Reasons or Causes of the Agreement were removed;—it was not made to depend on the Acceptance of any future Thing—and after the Change of Government as aforesaid, especially when

when one of the Parties, to wit, the Proprietary Governor ceased to exist, the King by the Plenitude of his Sovereign Power, was pleased to Order all concerned to take Notice of it and conform thereunto. This Language would have been altogether improper to Proprietors of Lands, respecting the Property of their Lands, &c. Further, as the Lines mentioned in this Agreement, and established in 1700, were not run out, and as running them exactly conformable to the Terms of that Agreement was very difficult and inconvenient; Commissioners were therefore appointed from each Government, who in 1725, came into another Agreement, wherein it was concluded, that beside some other small Variations, a straight Line should be run; instead of a parallel Line to Hudson's River, and be deemed the parrallel Line intended; which strait Line should be at each End twenty Miles from said River;—they also agreed upon the Equivalent mentioned in the Agreement, and in 1731 the Commissioners from the two Governments, run those Lines and measured off the Equivalent; and when that was done the Commissioners from New-York, thought it Necessary not only to have those Lands, put under the Jurisdiction and Government of the Province of New-York, but also to have a Surrender to the King, of the Right of Soil and Fee of the Lands; thereby to re-vest the King with the Property of the Lands, that he might be able to Grant them, to those who had petitioned for a Grant of them; when, or as soon as they belonged to the King to Grant. From all the foregoing Matters respecting the Settlement of the Bounds, Limits, Meers and Dividend between the two Governments of New-

New-York and Connecticut, and by this Method of concluding that Affair, it appears—That the Commissioners understood, that giving up Rights of Jurisdiction by fixing a dividend Line, did not transfer Property—and of this Opinion were the principal Gentlemen of Knowledge in the Law in Connecticut and New-York at that Day. However, they took a Deed of surrendery only of the Equivalent Lands, and left all other Lands, within the Connecticut Charter, and under the Jurisdiction of that Province, determinable, as to their Property, by the Rules of Law; and those that were never actually possessed or granted by the Dutch, are holden by that Title to this Day. These last Proceedings of the Commissioners implicitly give the same Construction to all the foregoing Transactions, as is argued for in the several foregoing Observations upon them.

Perhaps, to avoid the foregoing Observations, it will be objected, That by those Words in the Determination in 1664—*After fixing the Creek aforesaid, for the Bounds at or near the Sound, or Sea, it is said, "and a Line drawn from the East Point or Side, where the fresh Water falls into the Salt, at High Water Mark, North North West, to the Line of the Massachusetts, be the Western Bounds of the Colony of Connecticut"*—Do ascertain and fix the Extents of the Connecticut Charter, both as to Property and Jurisdiction; as the Word *Colony*, implies both; and where the Colony is limited, there both Rights are also limited: And as a Grant of the Whole Extent of Country, contained in the Charter, was both extravagant, and yet uncertain, as to the Operation of it on the West, so it was but just, and reasonable it should be

be explained and reduced to a reasonable Extent; and this the Commissioners did, and have expressed themselves to that Purpose, by saying that Creek and Line should be the Western Bounds of the Colony of Connecticut.—To which I answer, That the Word Colony doth not comprehend or imply Lands any otherwise than as Lands may be granted for a Colony, or there must be Lands for a Colony to settle upon. The Word Colony imports a Number of People settled upon Lands distant from the main Body of the Community—It is the People who go out of one Country, to dwell in another; accordingly the King's Subjects who dwelt in Connecticut before the Charter were called in the Charter itself, the Colony of Connecticut:—and those who at the Time of the Charter were the Settlers and Inhabitants there, were by that Charter incorporated and vested with Powers of Jurisdiction and Government, and stiled Governor and Company of the English Colony of Connecticut—and thereby they were vested by Royal Authority to exercise Government throughout the Extent of their Grant of Lands, and that Power might be extended as far as they extended their Colony by Planting and Settling the Lands they claimed—What uncertainty is to be found in the Limits of the Grant of Property, to the Colony of Connecticut? Surely none—for *Id Certum est, quod Certum reddi potest*.—It hath already been shewn, that the Boundaries of the Grant in the Connecticut Charter are intelligible, and may easily be so explained as to be Clear and Plain; and that all that can be objected thereto relate only to the Operation of the Grant which has also been explained, and thereby such objections have been

obviated. And as to the Pretence of the extravagancy of the Grant it may be observed, as has been before hinted—That the Considerations of the Grant mentioned in the Charter abundantly shew the reasonableness of so liberal a Grant, and that it is Plain the King knew he made a Grant of Lands, more extensive than the Colony at that Time was or soon would be, and that it was fully his Royal Intention, so to do.—It may also be further observed that the Grant has never been called in Question by Scirefacias, or any other legal Manner, on account of the extensiveness of its Limits, nor indeed on any account whatsoever; which must be done, and a legal Determination thereon ought to be had, before any one hath the Right to say it is to be limited short of the given Boundaries—No Man has a Right to say the Extent of the Grant shall be here or there & no farther, because as he imagines the King has granted too much. The Grant therefore to the Governor and Company of the Colony of Connecticut, must, as to Property, be considered to be and remain whole and entire, and that what and where it is, and where it extendeth, is described with sufficient certainty. That, as the Duke of York, and the Colony of Connecticut were the only Parties to the Determination made in 1664—and that Determination of the Commissioners, and the Assent of the Governor and Commissioners of Connecticut thereto, respected only, that Dispute which might arise or was then supposed to subsist between those two Governments; therefore it would not affect either the Rights of Government or Property, vested in the Colony of Connecticut, further than the Duke's Government extended,—The King not  
being

being Party to that Determination cannot be bound, or take Advantage thereby—Parties and Privies in Estate only, can regularly be bound or take Advantage by Estoppels.—To extend the Operation of that Determination further, would be to extend it beyond their Commission, and even beyond their plain Meaning therein, and against, the constant and continued understanding thereof, from that Time down to the final Settlement of the Bounds, Meers, and Dividend, between the two Governments, as fully appears from all the Transactions between them, and the Confirmation by the King thereon ; as herein before recited and observed upon, and would be extending the Doctrine of Estoppels, never favoured, much more extended, to a Degree beyond what ever was, or ever will, or can be admitted, by any Rules of Law or Equity—So that, as the Property to all the Lands contained in and conveyed by the Grant made by King James to the Council established at Plymouth, are well vested in, and by the Charter confirmed to, the Colony of Connecticut, with ample Powers of Jurisdiction and Government over the same—And those excepted out of King James's Grant by the Proviso contained therein, are all that the Duke of York can take by Force of his Grant from King Charles the Second, that respects Connecticut ; and as that is the only matter about which the said Determination is Conversant, so the western Bounds and Limits of the Colony of Connecticut, as expressed therein, must be construed to extend, to the Western Bounds, thereof with respect to New-York only—and therefore all the Rights of Property in the Lands and Jurisdiction over the same, as contained in the

Grant

Grant and Charter to Connecticut, beyond the Duke's Territories, must be supposed to remain untouched and unaffected thereby.—The Eastern Bounds, Limits, and Dividend of the Duke's Territories, with Respect to Connecticut, are now fully settled the Western Limits thereof, with respect to Connecticut's Grant, now remain, *in Statu quo Prius*, as they were left, and as expressed in the Agreement with the Dutch in 1650.

If Length of Time without continual Claims by the Colony of Connecticut, should be objected —The Query from the Lords of Trade and Plantations, and the Answer thereto, as herein before recited, with the frequent repetition thereof by them, and as frequent similar Answer given thereto by the Colony, I conceive will be a sufficient Answer to such objection.—While the Land remains in the Possession of the Indians the first Occupiers, the Authority of the Colony of Connecticut have no Jurisdiction or Government over them —The Right of Preemption being all the King had to Give and Grant to his Subjects of Connecticut therein.—So soon as the Indian Occupiers were willing to sell and remove from the Lands, the People of Connecticut, before any others, by and with Allowance from the Authority here, did, *bona fide*, purchase Part of the Lands within the Connecticut Charter West of the Province of New-York of the Indians, and are now extending their Settlements and Improvements thereon. If it should be objected—That the Opinion, already had, of one of the greatest Lawyers, as well as greatest Men in the Nation, is against me— With all Deference to his superior Abilities, I beg leave to say, That I conceive that Opinion was given on  
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the Ground of such Exhibits, and Representation of Facts, in the Case as Mr. Penn, who asked that Opinion, was pleased to furnish him with—In the State on which that Opinion is given, it is said—

*“ With Respect to the present Dispute, the Western Boundary of Connecticut was barred at the Time of the Original Grant, by the Dutch Settlement; and the Crown were deceived, when they were prevailed upon to convey a Territory, which belonged to another State, then in Amity with the Crown of England; besides this Objection, the Settlement of the new Boundary under the King’s Commission, in 1664. And what is still stronger, the new Line marked out by Agreement between this Province and New-York, has now conclusively precluded Connecticut from advancing one Foot beyond these Limits.”*—From

this recital, I think it is evident, his Lordship was not furnished with the Grant made by King James to the Council established at Plymouth, or any other of the Grants and Conveyances, antecedent to the Charter to Connecticut in 1662, and therefore did not consider them, in the Light they ought to be considered; which I conceive would have entirely removed, his Objection, that the Original Grant was barred by the Dutch Settlement, for that Settlement is expressly excepted out of the Grant—And as the Want of those Exhibits doth also materially affect the other Objection, with Respect to the Settlement with New-York—I conceive, that it may fairly be concluded, his Lordship’s Opinion would have been very different, had he been furnished with all the Exhibits material in the Case, to found an Opinion on.

Upon the Whole then it appears—that the Governor and Company of the Colony of Connecticut

ent, were by their Charter vested with the Powers of Government, and confirmed in the Right of Soil and Right of Preemption, to all the Lands within the Limits of their Grant; and the same have been no otherwise, given up, resigned, released or limited; by the Proceedings, Agreements, Determinations and Conclusions before mentioned, than as the same respect the Bounds, Limits and Dividend, between the Patent to the Duke of York, and the Patent to the Colony of Connecticut—And that the Right and Title of the Colony of Connecticut, to the Lands, within the Limits of their Grant, lying West of the Province of New-York, is good and valid—And that they have good Right, to extend their Possessions, Improvements and Jurisdiction there—And as the King cannot resume his own Grant or any Part thereof; consequently, if any Grants have since been obtained from the King by Mr. Penn or others, of Lands within the Limits and Extension of the Grant to Connecticut, the same are and must be to all intents and purposes Null and Void.

I have now gone through the Exhibits and Observations thereon, on which I ground my Opinion, That the Claim of the Governor and Company of the Colony of Connecticut, to the Lands within the Latitudes expressed in their former and renewed Charter, lying West of King Charles the Second's Patent and Charter to the Duke of York, now called the Province of New-York, is good and valid.—In the Course thereof, I have taken the Liberty to use many very judicious Observations of an honorable Gentleman, in this Colony, whose abilities are acknowledged by all, in a  
 Manuscript

Manuscript of his which I imagine you have never  
seen, and which I acknowledge myself much in-  
debted to that honorable Gentleman for. I sub-  
mit the whole to your candid Examination,

And Am,

Sir,

Your most obedient,

humble Servent,

*ConnePicut,*  
*April 8th, 1773.*